

Assembly Bill No. 2009

CHAPTER 443

An act to add Section 120392.3 to, and to repeal Section 104900 of, the Health and Safety Code, relating to communicable disease.

[Approved by Governor September 22, 2012. Filed with
Secretary of State September 22, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2009, Galgiani. Communicable disease: vaccinations.

Under existing law, the State Department of Public Health administers various programs for the protection of public health. The department provides a biennial report to the Legislature on the immunization status of young children in California.

Existing law requires the State Department of Public Health to provide appropriate flu vaccine to local governmental or private nonprofit agencies at no charge in order that the agencies may provide the vaccine, at a minimal cost, at accessible locations in the order of priority first for all persons 60 years of age or older in this state and then to any other high-risk groups identified by the United States Public Health Service. The department and the California Department of Aging are required to prepare, publish, and disseminate information regarding the availability of the vaccine and the effectiveness of the vaccine in protecting the health of older persons.

This bill would eliminate the priority order described above. The bill would allow the department to provide guidance to local agencies as to whether one or more population groups are to have priority for the flu vaccine offered through this program, as specified. The bill would exempt these provisions from the Administrative Procedure Act. The bill would require, in the absence of department guidance, local agencies to be guided by the influenza recommendations of the federal Centers for Disease Control and Prevention's Advisory Committee on Immunization Practices. This bill would authorize the department to also provide appropriate vaccine that prevents other respiratory infections to local government or private nonprofit agencies. The bill would eliminate provisions requiring the vaccine to be administered by physicians and nurses, as specified. The bill would make findings and declarations regarding the transmission of influenza by children to adults and the elderly.

Existing law immunizes a private, nonprofit volunteer agency whose involvement with the above-described immunization program is limited to the provision of a clinic site or promotional and logistical support, as specified, or any employee or member thereof, from liability for any injury caused by an act or omission in the administration of the vaccine or other immunizing agent to certain persons, if specified conditions are met.

This bill would extend the immunity provided to a private, nonprofit volunteer agency, as described above, to circumstances when the vaccine or other immunizing agent is administered to any person.

The people of the State of California do enact as follows:

SECTION 1. The Legislature hereby finds and declares all of the following:

(a) The federal Centers for Disease Control and Prevention (CDC) recommend annual seasonal influenza vaccination for all persons six months of age and older.

(b) Current law related to prioritization for influenza vaccines is outdated and needs to be updated to reflect current CDC recommendations.

(c) Children have the highest rates of influenza infection and schoolaged children are the major vectors for influenza transmission that spread the virus to adults and the elderly in the community.

(d) Eligible low-income and uninsured children can access vaccine at no cost through the federally funded Vaccines for Children (VFC) Program.

SEC. 2. Section 104900 of the Health and Safety Code is repealed.

SEC. 3. Section 120392.3 is added to the Health and Safety Code, to read:

120392.3. (a) The department shall provide appropriate flu vaccine to local governmental or private, nonprofit agencies at no charge in order that the agencies may provide the vaccine, at a minimal cost, at accessible locations. The department and the California Department of Aging shall prepare, publish, and disseminate information regarding the availability of the vaccine and the effectiveness of the vaccine in protecting the health of older persons.

(b) In administering this section, the department may provide guidance to local agencies as to whether one or more population groups shall have priority for the flu vaccine offered through this program. In developing this guidance, the department shall consider the influenza recommendations of the federal Centers for Disease Control and Prevention's Advisory Committee on Immunization Practices (ACIP) or other criteria in order to ensure that the vaccination program is efficient and effective in meeting public health goals. Any guidance issued pursuant to this subdivision shall be exempt from the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). In the absence of guidance from the department, local agencies shall be guided by the influenza recommendations of the ACIP.

(c) The department may provide appropriate vaccine that prevents other respiratory infections to local governmental or private, nonprofit agencies at no charge in order that the agencies may provide the vaccine, at a minimal cost, at accessible locations for groups identified as high risk by the ACIP.

(d) The program shall be designed to use voluntary assistance from public or private sectors in administering the vaccines. However, local governmental or private, nonprofit agencies may charge and retain a fee not exceeding two dollars (\$2) per person to offset administrative operating costs.

(e) Except when the department determines that it is not feasible to use federal funds due to excessive administrative costs, the department shall seek and use available federal funds to the maximum extent possible for the cost of the vaccine, the cost of administering the vaccine, and the minimal fee charged under this section, including reimbursement under the Medi-Cal program for persons eligible therefor to the extent permitted by federal law.

(f) A private, nonprofit volunteer agency whose involvement with an immunization program governed by this section is limited to the provision of a clinic site or promotional and logistical support pursuant to subdivision (c), or any employee or member thereof, shall not be liable for any injury caused by an act or omission in the administration of the vaccine or other immunizing agent, if the immunization is performed pursuant to this section in conformity with applicable federal, state, or local governmental standards and the act or omission does not constitute willful misconduct or gross negligence. As used in this subdivision, “injury” includes the residual effects of the vaccine or other immunizing agent. It is the intent of the Legislature in adding this subdivision to affect only the liability of private, nonprofit volunteer agencies and their members that are not health facilities, as defined in Section 1250.

(g) This section shall not be construed to require the physical presence of a directing or supervising physician, or the examination by a physician of persons to be tested or immunized.